

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS**

ROGER LEE BOWERS,

Petitioner,

v.

**CIVIL ACTION NO. 2:11-CV-73
(BAILEY)**

DAVID BALLARD, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge David J. Joel [Doc. 57]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Joel for submission of a proposed report and a recommendation ("R & R"). Magistrate Judge Joel filed his R&R on December 18, 2012. In that filing, the magistrate judge recommended that this Court deny the petitioner's § 2254 petition [Doc. 2] with prejudice.

Pursuant to 28 U.S.C. § 636 (b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); ***Snyder v.***

Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Joel's R & R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b). The R&R was originally returned as undeliverable [Doc. 58] as the petitioner had been transferred to a new facility without notifying this Court as he was obligated to do. This Court took the liberty of locating the petitioner and remailed the R&R to his new facility at Saint Mary's Correctional Center. The Court does note that the petitioner did eventually notify this Court of his change of address on December 27, 2012 [Doc. 60]. The docket reflects that service was accepted on December 26, 2012 [Doc. 59]. No objections have been filed. Accordingly, this Court will review the R&R for clear error.

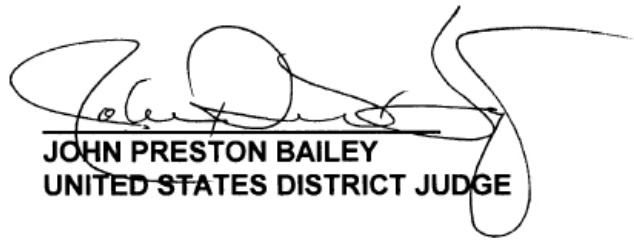
Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation [Doc. 57]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. The Respondent's Motion for Summary Judgment **[Doc. 42]** is hereby **GRANTED**. Accordingly, this Court **DENIES WITH PREJUDICE** the petitioner's § 2254 petition **[Doc. 2]**. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk is **DIRECTED** to enter judgment in favor of the respondent.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** the petitioner a certificate of appealability, finding that he has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: January 14, 2013.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE